

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS, TX 75202-2733

#E1-50  
RQ

April 4, 2003

Ms. Jaya Zyman-Ponebshek  
URS Corporation  
P.O.Box 201088  
Austin, TX 78720-1088

FD 34284

Dear Ms. Zyman-Ponebshek:

In accordance with Section 309 of the Clean Air Act and the National Environmental Policy Act (NEPA), the U.S. Environmental Protection Agency (EPA), Region 6 office, has reviewed your solicitation for comments for preparing a U.S. Department of Transportation, Surface Transportation Board, Environmental Assessment to construct and operate a rail line from the proposed Vulcan Material Company limestone quarry to a connection with the Union Pacific Railroad Company in Medina County, Texas. The proposed rail line would consist of approximately seven miles of single-track railroad from the quarry to milepost 250 of Union Pacific's Del Rio Subdivision near Dunlay, Texas, as well as either a 2-mile long loading loop or a 1-mile long straight track, which could include one or more parallel loading tracks, within the quarry.

We have completed our review of the brief project description and would like to take this opportunity to submit basic recommendations on the content and scope of the Environmental Assessment you are preparing. Our comments, which are enclosed, are based upon the Council on Environmental Quality regulations 40 CFR (Parts 1500-1508) and our authority under Section 309 of the Clean Air Act.

We appreciate the opportunity to comment. Please send our office two copies of the Environmental Assessment. If you have any questions, please contact me at (214) 665-7451.

Sincerely yours,

A handwritten signature in black ink, reading "Michael P. Jansky", is written over the typed name.

Michael P. Jansky, P.E.  
Regional Environmental Review  
Coordinator

Enclosure

**SCOPING COMMENTS  
FOR THE  
SOUTHWEST GULF RAILROAD COMPANY  
CONSTRUCTION AND OPERATION  
ENVIRONMENTAL ASSESSMENT**

**FEDERAL REGULATORY PROGRAMS**

EPA Federal programs, authorities and special interests include but are not limited to:

- A. Water Quality Management Program - Sections 106, 205, 208, and 303 of the Clean Water Act.
- B. National Pollutant Discharge Elimination System (NPDES) Permit Program - Section 402 of the Clean Water Act.
- C. Drinking Water Programs - Surface Public Water Supply and Underground Water Source Programs - Safe Drinking Water Act.
- D. Section 404 Permit Program Coordination - Section 404 of the Clean Water Act.
- E. Environmental Impact Statement (EIS) Coordination - EIS Preparation and Review Programs - National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act.
- F. Executive Orders 11988 (Floodplain Management) and 11990 (Wetland Protection).
- G. Section 7 of the Endangered Species Act - Protection of threatened or endangered species of flora or fauna.
- H. 36 CFR Part 800 of the Historic Preservation Act - Protection of archeological or historical elements eligible for nomination to the National Register.

Description and requirements of these programs:

A. The Environmental Protection Agency (EPA) established the Water Quality Management (WQM) Program under the authority of Sections 106, 205, 208, and 303 of the Clean Water Act to develop and implement programs to control point and nonpoint sources of water pollution. Specific program activities include identifying water pollution problems; assigning the responsibility for problem solving to state and local agencies; and then coordinating with these agencies in developing and implementing solutions to the problems. The state agencies establish their water quality goals and standards, and develop programs to meet these goals. To establish water quality standards, states designate uses for stream segments, and set numerical and general water quality criteria to attain these uses.

B. Wastewater discharges are considered point sources subject to a National Pollutant

Discharge Elimination System (NPDES) permit under Section 402 of the Clean Water Act.

C. The EPA developed primary drinking water regulations to protect public health, and established requirements for state programs to implement the public water supply supervisor program and underground injection control program under authority of the Safe Drinking Water Act.

D. Under Section 404, the U.S. Army Corps of Engineers is authorized to issue permits for discharge of dredged or fill material into waters of the U.S., subject to an EPA "veto" if the discharge has certain unacceptable impacts. Thus, in general, the Corps is the primary permitting agency for the Federal 404 program. EPA has the authority to review each permit application and to submit comments. Pursuant to the 404(b)(1) Guidelines for evaluating discharge of dredged or fill material, an EPA permit review focuses on evaluating practicable alternatives, minimizing impacts, and mitigating for unavoidable impacts to the aquatic ecosystem, including wetlands.

E. Section 309 of the Clean Air Act and the Council on Environmental Quality (CEQ) regulations require EPA to review and comment on projects that may significantly impact the quality of the human environment.

F. Executive Orders 11988 (Floodplain Management) and 11990 (Wetland Protection) require federal agencies to evaluate the potential effects of their actions in floodplains and to avoid adverse floodplain impacts wherever possible, as well as taking action to avoid adversely impacting wetlands wherever possible and minimizing wetlands destruction and preserving the values of wetlands.

G. Section 7 of the Endangered Species Act requires federal agencies to insure that any agency action does not jeopardize the continued existence of any endangered or threatened species or result in the destruction of adverse modification of such critical habitat.

H. 30 CFR Part 800 of the Historic Preservation Act requires federal agencies to identify and determine the effect of the action on any district site, building, structure, or object listed in or eligible for listing in the National Register of Historic Places.

#### GENERAL COMMENTS:

Environmental Assessment should objectively evaluate all reasonable alternatives and, for alternatives which were eliminated from detailed study, adequately discuss the reasons for their having been eliminated (40 CFR 1502.14).

#### ENVIRONMENTAL JUSTICE

All Federal agencies should be aware that on February 11, 1994, Executive Order 12898 (E.O.) on "Federal Actions to Address Environmental Justice in Minority Populations and Low-

Income Populations," and an accompanying Presidential Memorandum was issued. The E.O. directs Federal agencies to analyze "the environmental effects, including human health, economic and social effects, of federal actions...." The Presidential Memorandum directs EPA to ensure that Federal agencies analyze the environmental effects of Federal actions on minority and low-income communities when such analysis is required by the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. Section 4321 et seq.)

Although social and economic impacts have always been a consideration in EPA's Section 309 reviews, the Presidential Memorandum highlights the necessity to better integrate the consideration of human health, social and economic effects into the Section 309 review process. The E.O. calls for collection and analysis of information on race, national origin, income level and other appropriate information for areas surrounding projects that have expected environmental, health and economic effect on those populations.

### WATER QUALITY

For each alternative under consideration, we request that the EA adopt a process to ensure that water quality concerns are assessed. The discussion in the EA should be of sufficient detail to determine which sites are environmentally preferable. Site-specific water quality problems need to be assessed in greater detail, if applicable, including the adoption of site-specific mitigation measures to protect water quality and beneficial uses.

In 1987, Congress amended the CWA by adding Section 319. Section 319 requires states to assess nonpoint source water pollution problems, develop nonpoint source pollution management programs, and implement controls to protect and improve water quality and beneficial uses. We ask that the applicant work closely with appropriate state water pollution control agencies to determine what pollution control measures should be adopted to implement the state's nonpoint source management plans.

### GROUNDWATER COMMENTS

For the selected alternative under consideration, we ask that the EA adopt a process to ensure that the following groundwater concerns are assessed.

- a. Describe current groundwater conditions in the program areas. Assess any likely impact to groundwater quality and quantity from program activities.
- b. Identify mitigation measures to prevent or reduce adverse impacts to groundwater quality and discuss their effectiveness. We recommend that the applicant work closely with state and local agencies which regulate the protection of groundwater resources (i.e., state health departments and water pollution control agencies.)

### WETLANDS - CLEAN WATER ACT (CWA)

The EA should determine whether the project will require the placement of dredged or

fill material into waters of the United States, including wetlands, an activity regulated under Section 404(b)(1) of the Clean Water Act (CWA). We recommend that the applicant work closely with the U.S. Army Corps of Engineers to determine if Section 404 is applicable. We recommend the preservation and enhancement of existing wetland resources. The EA should consider alternatives which will preserve these resources in perpetuity.

It is essential that the applicant undertake every practicable effort to first avoid and then reduce the amount of fill placed into waters of the United States. It would be useful for the EA to make an initial determination whether the proposed project may require the placement of fill material in waters of the United States. If so, the EA should substantiate that appropriate and practicable steps have been taken to avoid and minimize the adverse impacts on aquatic ecosystems. Finally, the EA should describe appropriate and practicable measures to compensate for the unavoidable loss of wetlands and other waters of the United States.

#### AIR QUALITY COMMENTS - CLEAN AIR ACT

For the preferred alternative under consideration, we suggest that the EA adopt a process to ensure that the air quality concerns are assessed. The EA should discuss existing air quality conditions in terms of National Ambient Air Quality Standards (NAAQS), Federal Prevention of Significant Deterioration (PSD) increments, and state air quality standards. State air quality laws should also be discussed.

When appropriate, the EA should substantiate coordination with state/local/regional air pollution control agencies on air quality planning, air quality modeling, compliance with federal/state air quality standards, the need for air permits, air quality monitoring, and mitigation for adverse impacts.

#### PESTICIDES

The EA should state whether or not any pesticides (e.g., herbicides, insecticides, rodenticide, fungicides, etc.) will be used for vegetation clearance or control, maintenance and harvest operations, or the control of rat, mosquito or other vector populations. If so, the types of pesticides, application rates, and application procedures should be addressed. Any pesticides used must be registered with the EPA and the state, and label directions and instructions followed. All applicable state regulations must also be followed. In addition, because the regulatory status of chemicals is constantly changing, EPA recommends that a periodic review of the chemical's current regulatory status be done prior to application.

#### AGRICULTURAL LAND

The EA should clarify if any agricultural land would be impacted by the program. If so, the EA should use the U.S. Department of Agriculture classification scheme to describe the present use of agricultural land which would be affected. If this acreage is prime agricultural land (Class 2), consideration should be given to the Council on Environmental Quality (CEQ) (August 30, 1976 and August 11, 1980) which urge the protection of prime agricultural land.

**ENDANGERED SPECIES**

The EA should demonstrate adequate coordination with the Fish and Wildlife Service to identify any adverse effects, determine the effect and take measures to eliminate it and fully comply with the requirements under Section 7 of the Endangered Species Act.

**HISTORIC PRESERVATION**

36 CFR Part 800 of the Historic Preservation Act requires federal agencies to identify and determine the effect of the action on any district, site, building, structure, or object listed in or eligible for listing in the National Register of Historic Places. The EA should demonstrate proper coordination with the state historical preservation officer. If adverse impacts are identified, the applicant should request formal consultation with the Advisory Council on Historic Preservation (36 CFR, Part 800). Compliance with E.O. 121593 is required.